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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 3 AUGUST 1946, 1000-1300, LORD JUSTICE LAWRENCE, PRESIDING.

THE PRESIDENT: Dr. Siemers, you have an application, I think, to make. Haven't you been told about it?

DR. SIEMERS: No.

THE PRESIDENT: You wanted to apply for the witness Vice Admiral Buerkner; and also another request, that you should visit Vice Admiral Buerkner, and for three documents, a Pocket Book of the Fleet for the years 1908 to 1914 and a handbook of Seapower and Prestige at Sea for the years 1906, 1912, and 1914; and thirdly, a historical work on the German navy.

DR. SIEMERS: Yes, your Lordship. That is correct, Mr. President. I made these applications for information purposes.

THE PRESIDENT: Well, that application is very late in the day and the Tribunal has already indicated that they propose only to hear or to grant applications for witnesses and documents for very special reasons and therefore they would like to hear you as to what the special reasons are.

DR. SIEMERS: Mr. President, I cannot yet see how far anything in the course of the testimony of the General Staff will be necessary and some of these are documents which I would like to look over and that is why I made this application. I think and believe that I will not need to make any further applications to the Tribunal except in so far as I need to for myself in the course of the trial.

THE PRESIDENT: You are asking to go on a long journey to see Vice Admiral Buerkner before any evidence is called which makes it necessary.

DR. SIEMERS: As far as I know, Admiral Buerkner is in Ansbach.

THE PRESIDENT: Isn't it a fact that Vice Admiral Buerkner was here when he was summoned as a witness for the defendant Jodl

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and that then he was not called and therefore left Nurnberg?

DR. SIEMERS: Mr. President, I hoped, too, that it will not be necessary to have him but the testimony for the General Staff was just taken before the Commission and there are several questions which I would like to discuss because these are matters which in the earlier testimony for the individual defendants had not arisen.

THE PRESIDENT: The Tribunal will consider the application.

DR. SIEMERS: Thank you, your Lordship. I would like to add one thing, Mr. President. I had previously asked and I had been told by the General Secretary that no difficulties would arise from this and if I wanted to speak to Admiral Buerkner again I could probably speak to him and so I did not think at the time that there would be such great difficulties and I request the Tribunal, as far as possible, to give me the possibility of doing so.

THE PRESIDENT: The Tribunal will consider the matter.

THE PRESIDENT: Does counsel for the Reich Cabinet want to re-examine this witness ?

BY DR. KUBUSCHOK:

Q. Witness, a letter was shown to you yesterday, a letter which you had written to Reich Minister Dr. Lammers. How did you come to write that letter ?

A. From this letter to Dr. Lammers, I gathered the following : On the 6th of March, at the request of the racial officer of the S.S.,conversation took place concerning the handling and the treatment of half Jews. I no longer know where the conversation took place. In any case, it was not in the Ministry of Justice. In this conference, propositions were made which I found absolutely impossible -- the half Jews should, without differentiatio be handled as Jews and deported to working camps in Poland. In order to prevent decisions which I found absolutely unbearable, I turned to Reich Minister Lammers. I would like to stress, here, t hat the Ministry of Justice in this matter, so to speak, was only active on the perifery. These proposals included forced divorce which perhaps was very necessary, but only secondary when we consider the general problem.

Q. Yesterday, another letter from you was submitted to you. It was dated April 5, 1942. It was submitted to various party officers. The contents of this letter seems to be connected with the conversation of March 6.

A. When I consider both letters, I can only say the following: apparently, I had wirtten to Reich Minister Lammers and not found the necessary support from him and I wanted, under all circumstances, to prevent the proposal from being achieved. I found that complete denial was not possible. I had to make a positive proposal in order to limit as far as possible the number of people to whom it would be applied; therefore, I proposed to exclude, completely, the following application of the rule, that is to say, the second class, mixed persons, those who had only one non-alien grandfather and those products of mixed marriages of the first degree who were not capable of being assimilated, and thirdly, the mixed ones of the first degree who had partners in marria e who were half Jews.

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There remains, therefore, only a limited class of mixed persons. By virtue of sterilizing them, they could be prevented from further producing mixed persons. Therefore, I also opposed the compulsory divorce. I wish also to repeat, today, what I said yesterday at the conclusion; I regret deeply that on account of the circumstances of the time and the forces at work at the time, I could not make a better proposal.

Q. Yesterday, in the cross-examination, you asked about the retirement of Minister Dr. Schmidt. Is it correct that the retirement of Dr. Schmidt came as a result of health reasons; that he collapsed and fainted at a conference ?

A. That is what I was told.

DR. KUBUSCHOK: That is all. I am finished.

THE PRESIDENT: Witness, with reference to your letters to Dr. Lammers, which I understand were of the 6th of March and the 6th of April, the about which you have just been asked -- you remember them ?

WITNESS: Yes. I remember them. I remember the letters.

THE PRESIDENT: The conditions in the working camps in Poland were, in your opinion, such that it would be preferable for half Jews to be sterilized ?

WITNESS: That is my opinion

THE PRESIDENT: The witness may retire.

THE PRESIDENT: I call on Dr. Pelckmann, counsel for the SS.

MR. ELWYN JONES: I f your Honor pleases, before Dr. Pelckmann calls his witnesses, I have an application to make to the Tribunal with regard to the Witness Sievers who gave evidence before the Commission.

Yesterday, My Lord, about sixteen new documents of great importance came to Nurnberg. They are from Himmler's files. Some of those documents are letters written by this man, Sievers, himself. All of them relate to the work of an important component part of the SS, namely the Ahnenerbe, the SS Ancestry Heritage Research Organization of which Sievers was the head executive.

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These documents also relate to the Institute for Scientific Research for War Purposes. My application is for leave to cross-examine Sievers befor the Tribunal upon these documents. I make this application in view of the very great importance of these documents. In my submission their contents should go upon the record of this trial, I do submit that the documents should be put to Sievers personally. In my submission they wholly controver' the testimony he gave to the Commissioner, and I imagine the Tribunal itself may well want to question Sievers. It is in any event, my intention if you will allow me, to put these documents in. I do not think it will take much more time if I put them to the witness himself.

THE PRESIDENT: The witness, of which you are speaking, has be called before the Commission, I understand ?

MR. ELWYN JONES: Yes, My Lord.

THE PRESIDENT: But he has not be called before the Tribunal nor applied for ?

MR. ELWYN JONES: No.

MR. PRESIDENT: He is still in Nurnberg ?

MR. ELWYN JONES: Yes, My Lord.

THE PRESIDENT: He is not one of the witnesses who has been granted to Dr. Pelckmann ?

MR: ELWYN JONES: No sir, he is an additional witness.

THE PRESIDENT: I see.

MR. ELWYN JONES: Dr. Pelckmann opposes my application

THE PRESIDENT: Yes. Very well. We will hear you upon that now, Doctor.

DR. PELCKMANN: Your Lordship, I regret that I must oppose the request of the Prosecutor for permission to cross-examine. I would like first and foremost, to say, clearly, that I do not wish, in any way, to prevent the clarification of the case of the SS and the question of Sievers. My reasons are based upon the following : In no case can the cross-examination take place before the Tribunal. Sievers is not one of the witnesses I have asked to question before the Tribunal.

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If he is questioned, he should be questioned before the Commission. I must oppose it for reasons of procedure. The prosecution has for months, and perhaps years, been in position to see a very large quantity of material which has be seized. It has also been in the position, by organizations such as the CIC and the Intelligence Service to question witnesses who had been in camps for over a year. For a long time they have been in position to prepare the cross-examination before the Commission. The Prosecution, should not, in my opinion, because of these very grant advantages which it has compared to the Defense Counsel, be allowed to do this. However, I will withdraw my objection if my request which I made months ago, to be able to have access to the Documentation Offices of the Allies and look also for rebuttal material there were granted to me now. I will consider it fair then in case the Tribunal accepts, also the application of the Prosecution.

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I would then at least be in a position to find rebuttal material amongst the documents, and I would withdraw completely my opposition when it would also be granted to me on the ground of the rebuttal material found in this way to continue the questioning of witnesses before the Commission, as now the Prosecution has requested in the case of the witness Sievers. One can see that this case which the Prosecution has been handling, by investigating further the material, has been able to produce more documents against the SS, and should it not be granted in this case that the defense should have the chance to find some rebuttal material.

DR. DODD : Mr. President, before the Tribunal rules on this application, I would like to make one statement. This is the second time, at least, that Dr. Pelckmann has inferred that because he has been denied access to the document room that there is something oppressive about it as regards the defense.

I want the record to be perfectly clear that we know what is on that document room, and we know perfectly well there is no document there that rebuts any evidence that has been offered in this case, and if there were, it would have been made available to this Tribunal and to these defendants. I think it is fair to say that we rather resent this implication from the defense at this stage of these proceedings.

DR. PELCKMANN : May I add something to this? In my document book there are documents which I have found either in written material which has not yet been seized, or else in documents which I, after an exact description and definition, was able to obtain through the general secretary and through requests of my own.

I say, however, that I am not in a position at all to indicate exactly that documents in such cases can be

requested when I have not beforehand, exactly like the Prosecution been in a position to go through the entire mass of material, and that is the point which I stress. We see in this case how the Prosecution, contrary to the defense, and especially that of the organizations, is able to collect material.

THE PRESIDENT : We have already heard you say that, and we fully understand the point.

The Tribunal grants the application that this witness should be produced for cross examination here. That witness has already given evidence before the Commission, and in the opinion of the Tribunal, it is of importance that his evidence should be given fully, should be brought to light fully before the Tribunal. As these documents have only just come into the hands of the Prosecution, the Tribunal thinks it right that the documents should be put to the witness. It is the most convenient and the shortest course that they should be put to the witness before the Tribunal.

As to Dr. Pelckmann's objections that the defense are not being treated fairly with reference to the investigation of the documents, the Tribunal thinks there is no foundation for this complaint. It would not be proper to allow the defense to have what is in the nature of a fishing investigation into the thousands of documents which are in the hands of the Prosecution. If the defense can specify any document that they want, they will be given a view of that document.

I have already said that in my opinion any document which is helpful to the defense ought to be disclosed to them. That is the practice in the English courts, at any rate, and Mr. Dodd has informed the Tribunal now that if there were any document which were in any way helpful to the defense in the Prosecution's document room, it would be made available to the defense.

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DR. PELCKMANN : I would only like to say, your Lordship, that I did not say that the Prosecution was no fair in this matter, but in this case I would consider it fair if we had the opportunity.

THE PRESIDENT : I am explaining to you why the Tribunal do not think it is possible that the defense counsel should be allowed to rove about in the Prosecution's document room.

Now you may call your witnesses.

DR. PELCKMANN : I call witness Freiherr von Eberstein.

FRIEDRICH KARL VON EBERSTEIN, a witness, took the stand and testified as follows :

BY THE PRESIDENT :

Q Will you state your full name?

A Friedrich Karl von Eberstein.

Q Will you repeat this oath after me :

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE PRESIDENT : You may sit down. Go ahead.

DR. PELCKMANN :I will be very grateful to Your Lordship if the interpretation could be organised in such a way that technical definitions and professional terms could be, as far as possible, given in the German, because very often confusions arise in the interpretation. In the SS organization there are so many special definitions which it is difficult to keep apart in an interpretation.

THE PRESIDENT : Well, the Tribunal thinks that it would be convenient to them if both the German denomination and the English were given -- or the other language were given.

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DIRECT EXAMINATION

BY DR. PELCKMANN :

Q Witness, were you before 1933 and after 1933 a member of the general SS?

A Yes.

Q Did you already in 1938 become a member of the General SS?

A Yes.

Q Witness, I would ask you after each question to make a pause, just as I am going to be trying to make a pause after each answer. In 1928 dit the SS have its own chief, or was it under the chief of the SA?

A In 1928 the SS was under the SA leadership. The head was at the time Captain von Pfeffer. Himmler was at the time not head of the SS. The SS was under a certain Haiden, an Oberstabchef.

Q Was there an organization special for the SS?

A Yes, it was with the SA under the higher SA leadership.

Q Did you belong to the general SS only in an honorary capacity? That is to say, in addition to your other profession, or was it your chief capacity?

A I belonged to the SS besides my profession. I was a civil servant until 1934.

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Q As an SS fuehrer, did you have any salary?

A No, I had no salary as an SS fuehrer; and I lived on my own fortunr. Then later I had a salary of about a hundred and fifty marks every month as a civil servant.

Q Was that as a civil servant?

A Yes.

Q And then you had expenses besides through your tasks in the SS?

A Yes.

Q What were the reasons for your entering the SS? What reasons did you give?

A At the time, in 1928-1929, I was asked to become a member of the SS because I had already been in the party some years; and a value was given to my collaboration; and that is how I came into the SS.

Q Were you in the World War?

A Yes, I was in the World War, an officer in the World War.

Q What was your rank in 1930 in the SS?

A In 193 0 I was Sturmfuehrer and Standarten Adjutant.

Q What was your rank in 1933?

A In 1933 I was SS Gruppenfuehrer.

Q Through your activities, did you have a good view of the aims and activities of the SS before and after 1933 ?

A Yes.

Q You are a member of the German nobility, Witness?

A Yes.

Q Also in democratic countries, one believes that the nobility belongs to the respectable classes of the population. How does it happen that you became a member of an organization which, according to the belief of the prosecution, is criminal?

A I was at all times active on behalf of Germany, in keeping with the tradition of my family; and so when I became a member of the party and of the SS, I felt that I was fulfilling

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a patriotic task; and also before 1933 there were a great number of aristocrats and members of German princery houses who were members of the SS.

Q After 1933 was this movement ever stronger?

A Yes, after 1933, the Prince of Hohenzollern Ziehmaringen became a member of the SS, and Prince Von Brauschweig, Prince Lippe-Biesterfeld, General Graf Von Schulenburg, and many others.

Q Do you know that the Archbishop Gruober of Freiburg became a member of the SS?

A Yes, I know it.

DR. PELCKMANN: I point out to the Tribunal the document Number 5, which will later be handed in.

Q Do you believe on the basis of your experience that the membership of such prominent personages has made an impreswion on members of all classes in Germany?

A On the bourgeois classes of our population, most certainly.

Q I mean make an impression in such a way that one said, "If such good people belonged to the SS and worked for its aims, then it seems certainly that these aims must be good and legal." Do you mean that in this way?

A Yes. In any case I am of the opinion, and it was the opinion of my comrades, that one could at no time take it for granted that the organization followed criminal aims.

Q Had not the SS before 1933 committed many acts of violence, and were these not among its aims?

A No. As its very name says, " Schutzstaffel," "protective troop," this branch of the party was set up in order to protect the leading personalities. In general, I would like to point out also that already in 1930 Hitler, in the trial of the army officers, said that this revolution was planned to come through legal ways and that is how he expected to achieve power, through elections; and so he became Chancellor of the German Reich.

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Q Please describe the activities of the SS, for instance in the year 1933 when you were in Thuringia, the number of members, and other such details.

A As I have already said, I was in the SS in 1938 and 1929 in Thuringia. As far as the Reich Party Rally in 1929 was concerned, we had in all Thuringia approximately forty-five or fifty SS. As the Reichsparteitag there were SS men from all Germany, approximately seven hundred men. In 1930 there were election fights in Thuringia, which necessitated a commitment of a large number of SS men in order to protect the speakers. Some of these SS men were known to me: and I had to say which SS man had to accompany which speaker. This protection was necessary on account of the very difficult political struggle; and one had to be glad when the men came back safe and sound in the evening without having been wounded.

Q How was the relationship to the other organizations of the party? Will you please speak slowly because the interpreters are having difficulty.

A The SS was by far the smallest formation of the party. An order of the highest SA Fuehrung said that it should never have more than ten per cent of the numerical strength of the SA.

Q Where were you in 1933?

A In 1933 I was in Weimar, Thuringia.

Q And in what position?

A As fuehrer of the Oberabschnitt Mitte of the SS, which is the biggest one there.

Q How many SS men were at the time under your orders?

A That was after the taking of power. There must have been ten or fifteen thousand of them.

Q What area did this number cover?

A That was Thuringia and the Prussian province of Saxony.

Q How do you explain the increase in the number of the SS in these years?

A The increase can be explained firstly through the fact

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that the National Socialist Government had come to power; and a large number of people wanted to show their loyalty to the new state. Secondly, after the party in May, 1933, had ordered that it would take no more members, many wanted to become members of the groups, such as SS and SA, and then later become members of the party. Then also there were others who sought the sport and the comradorie of young men and were not so politically interested. The reasons were very diverse.

Q And after this time of the sudden increase, were the members carefully investigated, and was the old prerequisite for acceptance, which was loyalty and decency, later on maintained and increased?

A Yes. In March 1934, Himmler requested an investigation of all SS members who in 1933 had become members, a very thorough re-examination; and this went on until 1935. At that time fifty to sixty thousand members throughout the Reich were released from the SS.

Q Was it necessary to be a member of the party in order to be admitted as a member of the general SS?

A No. I said so already. It was in no way necessary.

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Q If party membership was not necessary, can it then be correct that the SS, as the Prosecution suggests, was the heart of the Nazi regime, an organization because of its attitude to life, was organized in such a way that one could conclude that at the time of admission the strictest formulas and requirements would be applied?

A The heart of the regime was the political leadership, the political party in itself, that is to say the Hoheitstraeger. The Hoheitstraeger were the leading men, a privilege which they maintained until the end. That was the heart of the regime. There were certain requirements for admission into the SS.

Q But what were the requirements of selection?

A The requirements were that they obtain testimonials from the police and also of a personal nature and they led a respectable life, that they shoul not be people without occupations and who did not want to work. These were the principles involved in the selection.

Q How about the unemployment situation?

A But after 1933 anyone who wanted work could find it.

Q But were these principles of selection not also on the basis of racial prerequisites, build, that is to say they had to show what their origi was and so forth?

A Yes, these qualifications were also required.

Q So that, in general witness, the selection was not on a political basis but rather on other circumstances which you have described?

A Yes.

Q In 1933 and 1934 as an SS Obergruppenfuehrer and Fuehrer of the largest Oberabschnitt of the General SS, did you know of any actions taken against Jews?

A No.

Q During the testimony as to another organization here we have heard of the so-called boycott of Jews in 1933 and 1934. Did you not, together with your men, participate in this at that time?

A The SS did not participate in this boycott and this action taken against the Jews. In Dresden, when I heard about these matters I sent out a

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memorandum to my men and forbade them from participating.

Q Do you believe that through the efforts to decrease the influence of the Jewish population in public life and the economy to ten per cent, which was the proportion they held to the population, that this was a crime against humanity?

A No.

Q Did you want to achieve this aim, which according to your ideology was your aim, did you want to reach it by force?

A No, under no circumstances. The SS had no influence, moreover, on these matters.

Q So the SS, in your opinion, had no business in accomplishing the party's program through individual actions and were strictly instructed in this matter?

A Yes, we had very strict rules already before 1934 whereby every individual action was forbidden. For instance, we had a very strict law whereby we were not to carry on any activity whereby the political activities of the party might be endangered, as for instance if the police had found arms on us. Even later Hitler always forbade any action to be taken of an individual nature.

Q Did you believe that the aims of reducing the influence of the Jews, in accord with your ideology, did you believe that thereby you were preparing a new war and thus, by a planned war, any opposition inside Germany would be impossible?

A According to my opinion I cannot understand that. The SS, after the announcement of the Nurnberg laws in 1935, were completely surprised as we thought the Jewish problem had been solved by the state. I remember too, that at that time Hitler had warned very strongly that one should not go beyond these laws and pointed out the great responsibility which rested in the hands of the German people.

Q Did you believe that you could do anything to prepare a war of aggression if the party or state excluded Communists or Socialists from public life?

A No.

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Q Did you have any such considerations at all?

A No. There seems to be a confusion. The circumstances were such that these matters never entered our mind.

Q What preparations did you notice in the SS for a war of aggression?

A No preparations.

Q Was the General SS educated militarily?

A No, it was not trained militarily through sport and small calibre shooting and other such exercises, which cannot be considered military training. May I also point out that Himmler said to me and to other SS Fuehrers that armament training was forbidden not in the Wehrmacht after 1935 and from that it seems obvious that no military training tasks were given to the SS or planned for it. Every SS member, as any other German, had to get military training inside the Wehrmacht and not in the SS.

Q I quote from document 5, which will later be submitted.

"The General SS is entirely a professional organization."

This is a quotation from a printed book on the tasks and duties of the SS and the German Police.

"Between the ages of 21 and 35 the greatest duties are imposed upon the man, especially up to the age of 25. In these first four years he must march and take part in competitive sports of all sorts and then the SS man up to the age of fifty will have to pass annual examinations. Why is this? The men are very active in their professions and one half to three-fifths are city dwellers. Their work in the cities is generally of a sedantary nature, and, in addition to that, there are the bad social conditions in the great cities and from the military point of view this is a grave problem.

"Men of the twentieth century no longer walk. They travel with the subway and so on."

I quote again:

"If we want to remain young we must participate in sport. But all this remains on paper if every year the men are not tested and also made proud of themselves so that they really participate in sport."

Witness, does this quotation give one the impression that especially after 1933 this was the typical activity of the SS?

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A Yes.

Q Can you remember statements made by Hitler and other party leaders at gatherings and also at the Reichstag or in newspapers which contained promises of lasting peace and praise of it, yes even a horror of and fear of the ghastliness of war?

A Yes.

Q Were any further tasks, for instance, taking care of the Reichparteitag and traffic and so forth, were all these tasks of the SS?

A Yes, at great mass parades of the party, the SS always had to maintain order. In addition to the maintenance of order, they had to accompany honorary guests and also take care of them. Those were always difficult and tiring days for the men, who also had to participate in the parade when the parade marched past.

There is nothing else I can say on that.

Q Did you have to take care of the honorary guests?

A Yes. On Reichsparteitags I myself and other higher SS Fuehrers had the task of leading the SS. Personally, at one of the last Reichsparteitags I was in charge of the British ambassador.

Q Where were you on the 30 June, 1934?

A I was in Dresden.

Q Before this date had you already heard that Roehm was plotting a so-called Putsch?

A Yes, eight days before the 30 June, that is to say around then, in 1934, I was ordered to Berlin by Himmler and he announced officially to me that Roehm was planning a Putsch and he also gave me instructions to hold my SS men in readiness and to bring them together in a barracks and also to give them instructions in case of something happening and so I had this information before it occurred.

Q Did the General SS take part in any killings on the 30 June, 1934? What do you know about it from your activities at that time?

A The General SS did not participate in any killings. It remained in barracks throughout the entire event.

Q Could you describe this in detail, as to how any killings took place

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in spite of everything?

A Yes. In the course of the day of the 30 June SS Obersturmbannfuehrer Beutel came to me for security services and he had an order from Heydrich. He was a younger man, this Beutel, and he did not know what he had to do and he came to me in order to obtain advice from me, an older man. He had the order in which there were approximately 28 names and in addition to that it seemed that some of these men were to be arrested and the others were to be executed. This written order had no signature on it and I advised this Obersturmbann-fuehrer to get clarification asto what should take place and I warned him against any immediate action. Then, as far as I know, a courier was sent to Berlin and this courier then brought eight orders of execution back and these were from Heydrich.

It was an order of the Fuehrer and Reich Chancellor. Then followed the name of the man to be executed, so and so for high treason condemned to death, and these documents were signed by Heydrich. The signature was, however, not genuine but was stamped, just a stamp of Heydrich's name.

On the basis of these documents eight members of the SA and of the party too, in Dresden were shot by the political police of Saxony.

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In addition to that, in Plauen a Hitler Jugend Leader was also shot and another person, too, in Kemnitz. That is what I know about it, at least about my area.

Q. Did you have anything to do with these shootings as Fuehrer of the Allegemeine SS (General SS)?

A. No, I had nothing to do with it. These orders coming from the State were taken to the political police and we could neither facilitate nor hinder them.

Q. Did you believe that Roehm really had treasonable intents and that the danger of the German government and the German nation was so immediate that only immediate action; that is to say, the shooting of those guilty could save the situation?

A. I really believed in an emergency and felt that because the highest German police authority; namely, Himmler, himself, had said so, it must be true; and moreover, on account of the state of alarm and with my cooperation with the Wehrkreis Befehlshaber, I was in a position which was very important.

Q. Do you remember that immediately after these events, the press had two telegrams of Reichspresident von Hindenburg and published them and one of them was to the Fuehrer, of June 2, 1934; and the other one to Goering of the 2nd June 1934. I quote SS document 74, which will later be handed in. Telegram of Hindenburg to Hitler: "From the reports which had been brought to me, I see that by your decisive action and by your personal activity you have nipped in the bud all these treasonable activities. You saved the German people from a grave danger. For this, I express to you my deeply-felt gratitude and respect. With the best greetings, von Hindenburg."

The telegram from von Hindenburg to Goering: "For your energetic and successful activity in the destruction of this treasonable organization, I express to you my gratitude and respect." Did you read these telegrams at the time in the press?

A. Yes.

Q. Do you remember the speech which Hitler made before the German Reichstag on June 13, 1934, in which he also said how apparently an immediate danger

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had been hovering over Germany?

A. Yes.

Q. Do you remember this -- and I will quote only a very brief extract from SS document 105.

THE PRESIDENT: Dr. Pelckmann, don't you think that you can summarize this rather more? This witness has said that so far as his district is concerned, the SS had nothing to do with the Rochm and it doesn't seem to be necessary to put all the details of it to him.

DR. PELCKMANN: I believe that I have only to add one point to the Roehm putsch but perhaps already it has been pointed out that there could be no suspicion that an unjust activity was the case.

THE PRESIDENT: You realize, don't you, as we have said over and over again, that we don't want to have the evidence given before the Commission repeated before us. What we wish is to have a summary and only the most important points dealt with and any new points; and, of course, we wish to see the witnesses in order to see whether they are credible.

DR. PELCKMANN: Yes, I will keep that in mind, your lordship.

THE PRESIDENT: Perhaps we better adjourn now.

(A recess was taken)

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THE PRESIDENT: With reference to the applications by Dr. Siemers, both of those applications are rejected. Dr. Siemers, of course, may go and visit Vice Admiral Buerkner if he wishes to do so, but the particular application which he made in that respect is rejected and so is the other application which he made for certain documents which are in public libraries.

BY DR. PELCKMANN:

Q One more question on the 30th of June. Witness, from Hitler's speech, do you recall that he said that some innocent persons had been killed and that he promised the judging of these cases in orderly court procedure?

A Yes.

Q In your circle of friends at that time, did you everywhere hear the opinion which you have testified to here today that a state of emergency had existed?

A Yes, not only in the SS but also from other Germans.

Q Witness, where were you on the 9th of November, 1938?

A On the 9th of November, 1938, I was in Munich.

Q What position did you hold at that time in the General SS?

A In the General SS I was SS Obergruppenfuehrer and head of the SS Oberabschnitt Sued, Chief Section South. In addition I was Police President of Munich.

Q Please describe how you first heard of excesses against Jewish businesses during this night ?

A On this day, as was my official duty, I had to accompany Hitler to the meeting of the old fighters in the old City Hall,(Rathaus). There Hitler was told that the legation counsellor von Rath had died of his injuries. Hitler was deeply impressed and refused to speak. During this dinner he had

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a very serious discussion with Goebbels. What was discussed I could not understand. Shortly thereafter Hitler drove to his home. I accompanied him there on my official duty. Following that I was made responsible for the security measures on the Odeon's Platz. Every year, from the 9th to the 10th of November, a meeting was held there to get new recruits for the Waffen SS. When I came to the Odeon's Platz Club it was reported to me that a synagogue was burning and that the fire department was being interfered with.

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Shortly thereafter I received a telephone call from the Landrat of the Munich Land who told me that the Jewish castle, Planeck, had been set on fire by an unknown person. The Gerndarmerie asked for assistance. This was about 2300 hours -- at 23-45. At 2400 hours Hitler came to the meeting. Since I could not leave my pose I sent the next Highest SS leader, Brigadefuehrer Diehm to the synagogue to create order there. In addition, I sent a raiding party of the police under an officer to Planeck in order to catch the person responsible and to help put out the fire.

Immediately after the roll call, after the swearing in -- like all other Higher SS Leaders, I was ordered to report to Himmler. There in the hotel, the Deputy Gauleiter Nippoll informed me that following Hitler's departure from the Rathouse, Goebbels had held an extravagant meeting of incitement against the Jews, and as a result, considerable excesses had occurred in the city. I immediately drove through the city in order to look over the situation. I saw shop windows which had been smashed, a few stores were bruning. I immediately took steps myself against this and then I put all available police on the streets with instructions to protect Jewish business establishments until further notice.

In addition to that, in cooperation with the city agencies of the city of Munich, I saw to it that the shop windows were nailed shut to prevent theft and so forth.

THE PRESIDENT: Dr. Pelckmann, the witness is saying that he took every step to prevent these excesses. I don't think we sant the details. I don't think that we want to hear the details of the steps he took to prevent these things and to keep order. The Prosecution can cross-examine if they want to.

DR. PELCKMANN: Mr. President, is it not possible to have me submit to the witness just what he will be asked by the Prosecution? I consider it important.....

THE PRESIDENT: The witness has been telling us, for several minutes, what happened on the 9th and 10th of November, 1938, and we think we know enough. We know the general nature of what excesses took place and I don't want the details of it. If you think that he has not said that the SS did not partici-

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pate in the excesses, you can ask him that question. He says that he did not take part, but that he tried to stop it. I don't want to hear the details of how he tried to stop it.

BY DR. PELCKMANN:

Q. What orders did you give to the SS Allgemeine, witness, not to participate in the excesses and did the SS offices subordinate to you obey these orders?

A. I told Brigadefuehrer Diehm that I strictly prohibited any action and I threatened considerable punishment. We considered this action definitely indecent in the SS.

Q. Do you know, witness, that an Adjutant Schallermeier, on the night before the 10th of November, took dictation from Himmler, approximately to the effect that he disliked the whole action of Goebbels propaganda and that Himmler had said the SS was to keep out of this action?

A. I don't know this document.

Q. I refer to the affidavit, SS number 5, which will be discussed later. You said, witness, that this whole action was prohibited by the leaders and the members of the SS. Is this because of the basic attitude of the SS in the Jewish question or do you consider that it was a variation that you yourself heard from some other source that it was a variation that you yourself heard from some other source that it would be too bad for the values of German national property to be destroyed?

A. I can only say that the SS. just like the Party, was anti-Semitic, but quite aside from any material reasons, we considered this indecent and the SS did not participate in it.

Q. One more question. On the preparation for wars of aggression, do you know whether the general SS made preparations for the entry into Austria and whether it participated in it?

A. No, the general SS did not participate in it. My Oberabschnitt covered the whole German-Austrian border. I would positively have had to know about it.

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Q. Do you know of any other plans of attack on Poland, Denmark, Holland, Norway, France and Russia, by the general SS?

A. I know nothing of it. The general SS would not have been in any position to attack a foreign state.

Q. After the beginning of the war, did the general SS continue to exist and what task did it then have to fulfill?

A. The general SS had, in practice, ceased to exist during the war. Of the 10,000 men who were included in my Oberanschnitt, when the Volkssturm was held up in November, 1944, there were only 1,200 left in the country. These 1,200 men had all been included in war work at home and they were no longer available for SS service. The last men had been taken into the Wehrmacht and the Waffen SS.

Q. Was there any official business as you have described which existed during peacetime?

A. No. Further tasks to be fulfilled by the SS was the Fuersorge Kommando (Welfare Command) of the Waffen SS and its work consisted of care for the wounded in the hospitals and care for those left behind by our dead comrades. There were not even men available for this work. We did this work sometimes even with women.

Q. Were the members of the general SS used in case of the so-called Totenkopf formation to guard the concentration camps?

A. Yes, a small percentage, just as members of other branches of the Party, members of the Kiefhaueser Bund, and mostly men who could no longer be used at the front. These men were all recruited on the basis of the emergency service order. Toward the end of the war, members of the Wehrmacht, even citizens of Allied states, provided guards for the concentration camps.

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Q I refer in this connection to Document SS 26 and 28. The Prosecution has asserted that the General SS, immediately after 1933, established concentration camps and that killings and atrocities occurred. What do you know about this?

A The General SS did not establish any concentration camps. The concentration camps were established by the State. To what extent atrocities occurred there I cannot judge.

Q Can you recall the case of an SS Fuehrer, Engel, in Stettin, in this connection?

A No, I knew Engle from the SS but what he had to do with this I do not know. He was in Northern Germany and I in Southern Germany.

Q In Munich you, as a member of the General SS were Oberabschnittfuehrer of the General SS; at the same time you were Police President and from 1939 on you were Higher SS and Police Leader. Please comment on this, whether fundamentally the position of Oberabschnittfuehrer of the General SS was connected, first with the position of Police President, and secondly with the position of the Higher SS and Police Chief.

A On principle I can say no on both cases. There were exceptions. The Police President of Duesseldorf, Nurem berg and Munich were at the same time Oberabschnittfuehrer. In the second case I can say that the great majority of Oberabschnittfuehrers of the General SS from 1939 on, that is from the outbreak of war, were also Higher SS and Police Chiefs. An exception existed in Berlin, where the Higher SS and Police Chief was Heissmeier, who was not Oberabschnittsfuehrer of the General SS.

Q Is the assertion of the prosecution correct, that the Higher SS and Police Chiefs formed a very close connection between the General SS and the Police.

A No. The SS and Police were separate organizations and only at the head, in the person of Himmler, were they connected. The General SS and the Police had entirely separate tasks.

THE PRESIDENT: I don't understand what you are saying. I thought you said that you were the head of the SS in Munich and also the Police President.

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DR. PELCKMANN: Mr. President, in order to inform the court ....

THE PRESIDENT: Didn't you say that you were the head of the SS in Munich and the South and also Police President?

WITNESS: Yes.

THE PRESIDENT: And then you say the Police and the SS were only united in the person of Himmler.

THE WITNESS: I have had no opportunity to describe the field of duties of the Higher SS and Police Chief. He had no power to give orders to the Police. He was only a representative of Himmler, without any power to issue orders.

THE PRESIDENT: Do you mean that you had no power to give orders to the Police?

THE WITNESS: In Munich, as Police Chief, yes. That was my State office, that was my profession. In other towns, however, the Oberabschnitts Fuehrer was not police chief. He could not ....

THE PRESIDENT: I am talking about Munich. In Munich you were the head of the SS and you were also Police President?

THE WITNESS: Yes.

THE PRESIDENT: The two organizations were united in you, is that right?

THE WITNESS: In my case, yes, but not generally.

THE PRESIDENT: I am not talking about generally, I am talking about Munich. Then you go on to say that the Police and the SS were only united in the person of Himmler. Those two statements seem to me to be contradictory.

THE WITNESS: I remarked that only in three cases in all of Germany were the Police Presidents at the same time Fuehrers of the General SS. It was an exception of my case in Munich and Duesseldorf and in Nurenberg. Otherwise ---

THE PRESIDENT: I thought you said Dresden, too.

THE WITNESS: In Dresden I was not in the Police.

THE PRESIDENT: I did not say you were. I thought you said the Police President in Dresden was also the head of the SS.

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THE WITNESS: No, that musthave been misunderstood. I did not say that.

THE PRESIDENT: Very well.

BY DR. PELCKMANN:

Q Witness, the misunderstanding probably arose because of a third function which has not yet been discussed. Please tell us, did the following three positions have any basicconnection with each other -- the Police President in the first place, the Higher SS and Police Chief in the second place, and the SS Oberabschnitts Fuehrer in the third place? Were these three, on principle, united in the same person?

A No, in my case, in Munich, it was an exception. In my case they coincided but not in otherparts of the Reich.

Q And now, witness, please distinguish between Police President and Higher SS and Police Chief. Please explain to the court what the difference is between these two positions.

A The Police President was a State administrative official, while the Higher SS and Police Chief, that position was created only during the war, without his being considered an official regional authority. According to the official instructions from the Reich Minister of the Interior, his sole task was to represent the Reichsfuehrer SS and Chief of the German Police in his Wehrkreis. He did not have any authority to issue orders to thepolice. According to the decree of the Reich Minister of the Interior, the Chief of the Hauptaemter, Order Police and Security Police remained the superiors of the police. They were the ones who had the authority to issue orders through their own channels, while the Higher SS and Police Chief was outside, without any authority to issue orders to the police.

Q And now, please, answer the question: Is the assertion of the prosecution correct that the Higher SS and Police Chief formed a close connection between the General SS and the Police?

THE PRESIDENT: You have already asked him thatonce and he has answered it. Let us go on to the next question.

Q Is the assertion of the prosecution, that the General SS and the Police officially formed a unity, that is a State within a State, is this

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assertion correct?

A No.

Q Since I do not want to go into details, I refer to the text this morning in Affidavits 86 and 88, which I shall hand in later. You have already said, witness, that the Higher SS and Police Chief had no power to issue orders to the Order Police or the Security Police. But did the Higher SS and Police Chief have the power to issue orders to the Waffen SS or to the General SS?

A To the Waffen SS the Higher SS and Police Chief had no power to issue orders. To the General SS only insofar as he was at the same time Fuehrer of the SS or Oberabschnitts Fuehrer of the General SS, not otherwise.

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May I add something to my previous answer. The higher SS and Police Chief had the right but not the duty to carry on instructions and he could make suggestio: I, for my Own, am only in a position to testify on theactivities of the higher SS and Police Chief at home. How it was in the occupied territories, I cannot judge.

Q. To sum up your testimony, could one say that the title Higher SS and Police Chief is misleading?

A. Yes.

Q. On the testimony of the witness on the Higher SS and Police Chief in the occupied territories, in contrast to Germany, I refer to Affidavit SS-87. In your capacity as Higher SS and Police Chief, did you also receive information from the Reichsfuehrer SS on the treatment of enemy fliers when they made emergency landings?

A. Yes.

Q. For what purpose did you receive these announcements and how did you use them?

A. This announcement said it was not the task of the Police to interfere in clashes between the German population and enemy fliers. This announcement said nothing about the treatment. This announcement was signed by Himmler; and the Higher SS and Police Chiefs had orders from Himmler to inform the Commanders of the Police, of the contents of this announcement as far as possible.

Q. Were Himmler's announcements sent previously and subsequently to party agencies by the Party Chancellory, Bormann?

A. Yes, to a great extent. Der Voelkische-Beobachter, a German paper, made publication to that effect, and in addition, the Gauleiter of my District commented on it. In addition, also the Commander of the Order of the Police, Hauptamt, as well as by the Inspector of the Security Police. I should remark that this was so throughout the Reich. They received their orders from the superiors as well. An order was issued giving the same information to the Police Officers as well as by the Reichsicherheits Hauptamt.

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Q. On the basis of these decrees, did the attitude of the Police in your district change in any way in the cases of landings of enemy fliers?

A. In no way. Our principal work was to adhere to the principals of the Geneva Convention, and the Hague Rules on Land Warfare. In any case, we had to treat prisoners as was proper.

Q. In the district under your command, did the lynching of fliers occur, and if so, tell us about it?

A. No. Lynchings did not occur. But unfortunately, shootings of fliers did occur. It happened that the fliers were taken out of the Police Stations and shot. As I have now learned from the press, trials have been held for these men, and the murders atoned for. I have been arrested for over a year and get my information from the papers. The reports of the trials indicate that the Police did give the fliers attention and proper treatment, informed the nearest Luftwaffe office, bound their wounds, and did all that could be done for them.

Q. Was it unusual, or a violation of the Hague Rules on Land Warfare, if the fliers were arrested by the Police and not by the Wehrmacht?

A. I can give no judgement on this international --

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THE PRESIDENT: He is not a witness on Law. This is a matter for us to judge.

Q Witness, were there general instructions from the beginning of the war, that any fliers who had made emergency landings were to be taken into custody by the Police?

A Yes. The regulations read as follows: The fliers who had bailed out were to be arrested by the Police. According to German Law, any other citizens were able to do this. Then they were to be taken to the Police. The Police Stations had orders to inform the nearest Luftwaffe office that the Police had enemy pilots and that the Luftwaffe was to come for them. There was a binding rule that these captured fliers were to be turned over to our Luftwaffe offices.

Q What did you as Higher SS and Police Chief have to do with the Gestapo and the SD?

A Nothing. Through the Inspector of the Security Service, the Higher SS and Police Chiefs, through the basis of existing regulations, were informed of such happenings in the sphere of the State Police or Security Service. These two agencies, the Security Service and the State Police, received instructions directly from the offices concerned, Roman Numeral III or Roman Numeral IV of the RSHA, Reichsicherheitshauptamt.

Q Did you then have no power to issue orders to the Inspectorate of these agencies?

A I believe you made a mistake by saying, "Inspectorate". I could not have any power of command over "Inspectors".

Q You had no power to issue orders to the Security Police and the SD?

A No.

Q What did you, asFuehrer of the Oberabschnitts, and the General SS, what did you have to do with the Gestapo or the SD?

A As Oberabschnitts Fuehrer I did not have anything to do with them.

Q Was that so throughout the Reich, that the Fuehrers of the General SS had no power to issue orders to the Gestapo and the SD?

A Yes. The General SS had no executive powers and in addition, in the field of intelligence, in the sphere of security service, was not allowed to

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interfere.

Q Did the Oberabschnitt, the Oberabschnitts Fuehrer, and Standarten Stuerme, of the General SS, have any official connection with the Gestapo or the SD?

A No.

Q Up to September 1944, what did you, as Higher SS and Police Chief, or his Oberabschnitts Fuehrer of the General SS, have to do with concentration camps?

A Nothing.

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Q Is that true for all the Reich, that the Police President, the Higher SS and Police Chief, and the Fuehrer of the General SS had nothing to do with concentration camps?

A Yes.

Q What offices were responsible, first for delivery to and dismissal from concentration camps, and second for the administration of the concentration camps themselves ?

A For admission and release from a concentration camp, Amt IV of the RSHA was competent. For the administration and internal affairs of the concentration camps, the Economic and Administrative Head Office of the SS was responsible, Amtsgruppe D, Inspectorate of Concentration Camps.

Q Then can one conclude from your answer that for killings and atrocities committed against prisoners in concentration camps, neither the Police President of the District in question nor the Higher SS and Police Chief of this district, nor the Fuehrer of the Oberabschnitt of the General SS was responsible ?

A None of the officers mentioned was responsible for such things. The concentration camp apparatus was a strictly enclosed set with channels of its own.

Q Do you know the concentration camp at Dachau, from your own experience?

A Yes. In the course of the years from 1936 on, when I was transferred to Munich, I often received orders from Himmler that I was to take high German and foreign officials to Dachau where the concentration camp was to be found. Among others, I took the Yugoslavian Minister of the Interior there, some high American police officials, a number of commandants of prisoner of war camps, high political personalities from Italy, and so forth.

Q Then since you say you had nothing else to do with the concentration camps, that was your only opportunity to obtain permission to enter them; and if I have understood you

correctly, just like the guests who were inspecting the camp, you received permission through the RSHA ?

A Yes; that is, I received orders to go there, and the guests received permission. It was done in the following way: Either Himmler's staff or the RSHA, through the Inspectors of Concentration Camps, informed the competent camp commandant that guests were coming with me as their guide.

THE PRESIDENT: We do not think you need go into the details of the exact way in which the orders went. We do not want the details.

BY DR. PELCKMANN:

Q Aside from the Rascher case, which I shall discuss in a minute, did you ever have any official reason to visit the camp at Dachau ?

A No.

Q Did you perhaps, for other reasons, have the desire to obtain information about conditions in the camp, perhaps because you had heard that mass killings were undertaken there, and that the people were starving to death ?

A No, because from what I saw when I visited the camp everything was in order. The kitchen installation was shown, the hospitals, the operating rooms, showers, beds; and there was an opportunity to see numerous prisoners who, in my judgment, in peace times--that is, before 1938--were in an outstandingly good state of health. After 1939--that is, during the war--they gave the impression of being normally well fed.

There were thousands of prisoners. In Munich, for example, they were employed in public squares and streets, and were active in the removal of bomb debris. Everyone could see the prisoners. From my point of view, on the basis of my knowledge gained during my visit to the camp, I had no inclination to intervene, and I had no right to do so.

Q On these visits, could you, because of your position see more or less than the visitors whom you accompanied ?

A I cannot judge. Tours were given through the whole camp. For example, in the fall of 1944, the commandants of prisoner of war camps were taken through. They were all experts. They knew everything about the camp; they could go around

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everywhere, according to their own judgment, and could look at everything.

Q. Did you ever hear anything about biological experiments of living persons in the concentration camp at Dachau, and, if so, when?

A. Yes. In the spring of 1944, in the course of criminal police investigations against an SS Hauptsturmfuehrer, Dr. Rascher, a medical doctor, and his wife were accused of "Kindunterschiebung" -- that is a word that is very difficult to translate. They were accused of illegal appropriation of other people's children.

Secondly, Rascher was accused of having commited financial irregularities in connection with the research station at Dachau, where these biological experiments were carried on. This research station was directly subordinate to Himmler, without any intermediate authority.

Q. Did you know anything of these experiments beforemand?

A. No. It was only by coincidence that I found out about them.

Q. Please describe your investigation, so that the Court may see that you did not close your eyes to such things?

A. On the basis of the events of the proceedings which had already begun with the criminal police in Munich, I forced entry into the camp at Dachau. That was as early as 1944. Communications were so poor that I could not wait long for approval. With the help of a teletype message to the Inspectorate I learned that in the course of the police investigation that I could obtain permission from there and would go to the officials at Dachau. I did not know anything about the biological experiments at that time, but knew only of the first two-mentioned offenses. And when, in a talk with the camp commandant, I merely mentioned the name of Rascher, he, as well as the camp doctor, who had been called there, said that they considered Rascher a dangerous person who was carrying on the most abominable experiments on living human beings. He, Rascher, was vested with full powers from Himmler; and the camp commandant and his personnel were so intimidated that up to the time when I intervened, they did not dare oppose Rascher's activity in any way.

They sought in me the protection of a high SS Fuehrer. Rascher had been previously arrested by the criminal police for investigation; so when I dis -

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covered the experiments, of course, I did not release him again. I immediately made a personal report to Himmler in his field command post in Eigen near Salzburg, on my own decision. Himmler had reproached me by telephone for interfering at all.

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He said I probably wanted to hold assensational Trial. I made the situation clear to Himmler. He was very reserved toward me then. I said I did not understand anything about the matter. Rascher made very important experiments. He promised he would keep the documents which I had brought and would submit the Rascher case to the highest court; the Supreme SS and Police Court, it was a competent court. Himmler was Rascher's superior. Unfortunately, he was not subject to the jurisdiction of my court.

Q Was any trial of Rascher held?

A No.

Q What became of Rascher?

A Rascher remained under arrest. Without interruption for weeks and months, I kept applying to Himmler's office. I learned later that Himmler had not turned over the files at all.

Q Did you later learn Rascher was in a concentration camp?

A Yes. Rascher remained under arrest in the SS Barracks, Munich. Because of the approach of the American troops, the barracks were evacuated. He was then sent to Dachau. I have learned from the press that he must have been shot during the last few days. I cannot give any further information. Since the 20th of April, 1945, I was relieved of my post.

THE PRESIDENT: Before we adjourn, perhaps you can tell us how long you are going to be with this witness.

DR. FELCKMANN: I assume 45 minutes, Your Lordship.

THE PRESIDENT: The Tribunal will adjourn.

(The Tribunal adjourned until 5 August 1946, at 1000 hours.)